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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/942,836	08/30/2001	Holger Knaack	Beiersdorf 740-WCG	8547

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EXAMINER

PICKETT, JOHN G

ART UNIT PAPER NUMBER

3728

DATE MAILED: 06/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/942,836

Applicant(s)

KNAACK ET AL.

Examiner

Gregory Pickett

Art Unit

3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 08 April 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 8 and 9 is/are allowed.
- 6) ☒ Claim(s) 1, 3 and 5-7 is/are rejected.
- 7) ☒ Claim(s) 4 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

**DETAILED ACTION**

1. This Office action acknowledges the applicant's Amendment submitted 8 April 2004. Claims 1 and 3-9 are pending in the application.

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

***Claim Rejections - 35 USC § 112***

3. In light of the applicant's amendment, the rejection of claim 8 under 35 U.S.C. 112, second paragraph is hereby withdrawn.

***Claim Rejections - 35 USC § 103***

4. Claims 1, 3, 5, and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith (GB 853,891) in view of Stracke (DE 94 19 312.6) and Hobbs (US 2,979,250).

Regarding claim 1, Smith discloses (Figures 1-3) a folding box having a rectangular pack casing (as shown, Figures 2 and 3) formed by the following:

- a front side wall (2) having a base end and a lid end;
- a rear side wall (4) having a base end and a lid end;
- a right-hand side wall (3) connecting front side wall (2) and rear side wall (4);
- a left-hand side wall (1) having a base end and a lid end;
- the sidewalls defining a cross-sectional area therebetween (see Figures 2 and 3);

intermediate flaps (5, 6, 7, 8), each having the same height, articulated on the base end of each of the side walls (1, 2, 3, 4);

four base flaps (9, 10, 11, 12), each base flap articulated on each intermediate flap (5, 6, 7, 8), wherein the base flaps are adhesively bonded to one another such that the base automatically closes as the folding box is erected (Page 1, Lines 76-85);

and a top closure formed by at least three closure flaps (22, 23, 24) extending from and articulated on the lid ends of the left-hand side wall (1), the right-hand side wall (3), and the rear side wall (4), the closure flap (22, 23) extending from the lid end of the rear side wall comprising a rectangular lid part (22) and an insertion flap (23). Smith also discloses a top support structure (20, 21).

Smith does not disclose closure flaps extending from the lid ends of the left and right hand side walls each having three folding lines which subdivide into a first spacer crosspiece, a supporting strip, a second spacer crosspiece, and an adhesive flap, with the adhesive flaps of the closure flaps bonded to the inside of the box so that the supporting strips are essentially at right angles to the spacer crosspieces

Stracke discloses a folding box (Figure 1) with articulated flaps (11) located on the top portion of the left-hand (4) and right-hand (5) sidewalls with four panels connected by three parallel fold lines (as shown, Figure 1). The flaps of Stracke function as claimed by the applicant. The flap structure of Stracke was, at the time the invention was made, an art recognized equivalent to the top support (21) of Smith for holding an end structure of an article within an enclosed box. It would have been obvious to one of ordinary skill in the art at the time the invention was made to replace

Art Unit: 3728

the top flaps (20, 21, and 24) of Smith with the top flaps (11) of Stracke since the selection of either of these known equivalents to retain the top portion of an article would have been an obvious matter of design choice within the level of ordinary skill in the art.

Smith-Stracke meets all limitations claimed by the applicant except for at least one of the base flaps having a face of a size substantially the same as the cross-sectional area between the walls.

Hobbs discloses a box (Figure 1) with sidewalls (9) tapering towards the lid region. Hobbs teaches this tapering to facilitate stacking (see for example Figure 4). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the box of Smith-Stracke with tapered sidewalls as taught by Hobbs in order to provide for secure stacking of the boxes. With such a tapering, the base flap (10) of Smith would have had a length and width of substantially the same size as the top-most cross-sectional area.

As to claim 3, the folding box of Smith-Stracke-Hobbs discloses second and third articulated panels with a cutout (Stracke 16) for accommodating the product.

As to claim 5, the folding box of Smith-Stracke-Hobbs discloses tapered sidewalls (see Hobbs, Figure 4).

Regarding claim 7, Smith-Stracke-Hobbs discloses a box as applied to claim 1. Smith-Stracke-Hobbs meets all limitations claimed by the applicant except:

Smith-Stracke-Hobbs does not expressly disclose a box containing a jar with a screw closure positioned thereon.

Smith-Stracke-Hobbs is capable of containing a large variety of objects of a cylindrical nature, which are to be held at their top and bottom. Jars with screw closures are typically cylindrical in nature. It would have been obvious to one of ordinary skill in the art at the time the invention was made to place a jar with a screw closure into the box of Smith-Stracke-Hobbs in the manner claimed by the applicant in order to securely transport a jar while preventing the spillage of its contents.

5. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Smith-Stracke-Hobbs as applied to claim 1 above, and further in view of Sparks (US 2,744,622).

Smith-Stracke-Hobbs discloses a box as applied to claim 1. Stracke further discloses a box (Figure 1) with cutout (9) on front sidewall (3) extending into adjacent sidewalls (4, 5). It would have been obvious to one of ordinary skill in the art at the time the invention was made to include the cutout taught by Stracke in the folding box of Smith-Stracke-Hobbs in order to display the box contents to the consumer.

The box of Smith-Stracke-Hobbs does not disclose a transparent film covering the cutout. Sparks discloses a box (Figure 1) with a cutout having a transparent film (37) covering the cutout. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the box of Smith-Stracke-Hobbs with a transparent film covering as taught by Sparks in order to protect the contents from damage while allowing for viewing by the consumer.

***Allowable Subject Matter***

6. Claim 4 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

7. Claims 8 and 9 are allowed.

8. As allowable subject matter has been indicated, applicant's reply must either comply with all formal requirements or specifically traverse each requirement not complied with. See 37 CFR 1.111(b) and MPEP § 707.07(a).

***Response to Arguments***

9. Applicant's arguments with respect to claims 1, 3, and 5-7, filed 8 April 2004, have been fully considered but they are not persuasive.

10. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., stable, continuous platform for an article) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26

Art Unit: 3728

USPQ2d 1057 (Fed. Cir. 1993). The flaps (9, 10, 11, 12) of Smith function as a bottom closure in the embodiment of Figures 1-4 (see Figure 2).

11. In response to applicant's argument that there is no need to use Stracke's top closures with Smith, the references Smith, Stracke, and Hamilton all disclose folding box end flaps with structures to retain an end portion of a held article and are considered art-recognized equivalents. All three retention means are considered interchangeable since they are capable of being collapsed to enable an item to pass and therefore would not interfere with the top loading feature of Smith. The selection of any of these known equivalents would have been an obvious matter of design choice. As to whether one is a top or bottom, all three retention means are considered interchangeable since they are all concerned with end retention of the held article and would perform equally well in either a top or bottom location.

12. In response to the applicant's argument that the "examiner does [not] contend that Stracke discloses such a strip or such bonding". The examiner respectfully disagrees and directs the applicant's attention to Figure 4 of Stracke.

13. Applicant's arguments, see page 7, second paragraph, filed 8 April 2004, with respect to claim 4 have been fully considered and are persuasive. The rejection of claim 4 has been withdrawn.

14. Applicant's arguments, see page 8, first paragraph, filed 8 April 2004, with respect to claim 8 have been fully considered and are persuasive. The rejection of claim 8 has been withdrawn.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory Pickett whose telephone number is 703-305-8321. The examiner can normally be reached on Mon-Fri, 9:30 AM - 6:00 PM.

Art Unit: 3728

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 703-308-2672. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*GP*

Gregory Pickett  
Examiner  
14 June 2004



**ANTHONY D. STASHICK  
PRIMARY EXAMINER**